AN ANSWER

To the *Seditious* and *Scandalous*

PAMPHLET,

ENTITULED,

The Tryal of *W. Penn* and *W. Mead*, at the Seſſions held at the *Old Baily*, *London*, the 1, 3, 4, 5, of *Sept.* 1670.

CONTAINED

In FOUR SECTIONS.

SECT. I. *The Deſign of the Libellous Pamphlet diſcovered.*

II. *The Scandals againſt the then Lord Mayor*, *Sir* Thomas Bludworth, *and Sir* John Hovel *Recorder, Anſwered.*

III. *The Juſtice and Honour of that Court Vindicated, by a True and Impartial Relation of that whole* TRYAL.

IV. *The Fining of that Jury that gave two contrary Verdicts juſtified, to prevent a Failer of Juſtice in* LONDON.

Jude, Verſe 8.

Theſe filthy Dreamers, defile the Fleſh, deſpiſe Dominions, ſpeak evil of Dignities.

Verſe 19.

Theſe be they, who ſeparate themſelves, ſenſual, having not the Spirit.

Written by *S. S.* a Friend to JUSTICE, and Courts of JUSTICE.

LONDON, Printed by *W. G.* 1671.

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The Tryal of W. Penn and W. Mead, at the Sessions held at the Old Baily, London, the 1, 2, 4, 5, of Sept. 1670.

OUT

In FOUR SECTIONS.

Sect. I. [illegible] Pamphlet [illegible] overed.

[illegible] John Hovel

[illegible] Pindicates, [illegible] of that [illegible]

[illegible] LONDON

[illegible] Dignities.

[illegible]

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Sect. I.

The Design of the Libellous Pamphlet discovered, by way of Preface, to the Impartial and Ingenious Reader.

Semper ego Auditor tantum? Nunquamne reponam? Can it be, that a dumb Child can ſtand by and ſee a Traitor about to aſſaſſinate his Soveraign, and not cry out, *Miles noli Regem ferire!* (Do not kill the King!) Or can, or ought I to be ſilent, and hear a turbulent and inhumane ſort of People, called *Quakers*, in a printed Book, by them falſely Entituled, *The Peoples ancient and juſt Liberties aſſerted, in the Tryal of* William Penn *and* William Mead *at the Seſſions held at the* Old Baily *in* London, *the firſt, third, fourth, fifth of* September, 1670. Which Book I have great reaſon to believe was compoſed by *William Penn* the half *Quaker*, and therefore can give it no other name, but *The Second Part* to his Blaſphemous Treatiſe called *The Sandy Foundations ſhaken*; for it's no wonder, that if he, who could daringly Blaſpheme the Holy Trinity in that Book, ſhould not bluſh to villifie and contemn the Kings Court, and falſely ſcandalize and reproach the Kings Juſtices, and revile all Methods of Law, and Forms of Indictments, calling them *deteſtable Juggles*,

and ſtiling this particular Indictment *a Romance Indictment, fol. 29. ſect. 4.* and his Brother *William Mead* to the like purpoſe ſtiles this Indictment, *a bundle of ſtuff, Lyes, and Falſhoods, fol. 13.* *Penn's* impudency carrying him ſtill further, to endevour in a popular way to ſubject the Fundamental Laws of the Land, impudently aſſerting in his Preface to the ſaid Book, *That the Jury were the proper Judges both of Law and Fact, vid. fol. 3.* And *Penn* being for his turbulency and impertinency commanded to be put into the Bail-dock, exclaimed with a loud voice to the Jury, *This I leave upon your Conſciences, who are of the Jury, [and my ſole Judges,] &c. vid. fol. 12.*

Now Gentlemen of the long Robe look to your ſelves, and your *Weſtminſter-Hall:* If theſe learned Reformers of Religion ſhall likewiſe Reform your Laws and Methods of Proceedings (as doubtleſs they deſign it) and make twelve Jury-men, eleven of which it's poſſible can neither write nor read, to be the ſole Judges both of Law and Fact; farewel then to your great Acquiſitions, your Year books then will be out of date, and an *Ouſter* will be put to your Books of *Entries.* Theſe are the Beaſts of *Epheſus*, that the late Lord Mayor, Recorder, and Bench of Juſtices have been contending withall; the Court aſſerting the Jury to be Judge of the Fact only, and that it was the Courts Prerogative to judge the Law, according to the old Maxim, *Ad queſtionem juris reſpondent Judices, ad queſtionem facti reſpondent Juratores.* And doth not *Magna Charta* ſay in effect as much? (which they ſo much glory in for their own Ends, although when it toucheth them in point of obſerving the Laws of the Holy Church and Gods Worſhip, they will call it *Magna Fartha,*

Fartha, or ſomething worſe.) Doth not the Great Charter made *Anno 9. Hen. iij. Chap.* 29. ſay, **That no Freeman ſhall be taken, or impriſoned; nor be diſſeiſed of his Freehold, or Liberties, or free Cuſtoms, or be Out-lawed, or Exiled, or any other ways deſtroyed; nor we ſhall not paſs upon him, nor condemn him, but by lawful judgment of his Peers, [or] by the Law of the Land.** This [*or*] is disjunctive, or copulative; if disjunctive, then it muſt imply ſome other Judges beſides the Jury of twelve Men, which are called the Peers or Equals; if it be taken copulative (*or* for *and*) it ſtill implies another Juriſdiction beſides that of the Peers, and *per Legem terræ* in that place cannot (as this Novice of the Law doth inſinuate) be underſtood to be the Tryal of the Jury only, but to be the Tryal both of Judge and Jury, according to that Maxim, *Ex facto jus oritur:* Therefore the Form of Entry of the Judgment is *Ideo conſideratum eſt per curiam, Vid. Coke's Inſtitutes, lib.* 2. *cap.* 12. *ſect.* 234. *fol.* 154, 155. If the Law be as this Youngſter would have it, *viz.* that the Jury is both Judge of Law and Fact, and that the Kings Juſtices cannot Fine for Contempt of the Court, nor correct the Corruption or Miſdemeanor of Jury-men, nor inform their Ignorance, nor rectifie their Miſtakes; the Juſtices in *Oyer* and *Terminer* have that Name for nothing, and the Juſtices will be but Cyphers, and ſit there only to be derided and villified by every ſaucy and impertinent Fellow.

Thus you ſee, Gentlemen, if theſe things take place, they will not only do as their Brethren, the late Reformers of Law and Religion, turn the Laws into *Engliſh*, but turn the Judges and Juries alſo out of *Weſtminſter-Hall*, and ſet up a High Court of Juſtice of Saints;

and

and this *John* of *Leyden*, together with his Brethren the *Quakers*, (who eſteem themſelves the Saints) ſhall judge the World: Which God for his Name Sake prevent.

Sic precatur ſerio S. S.

SECT. II.

The Libellous Scandal againſt the then Lord Mayor, *Sr.* Thomas Bludworth, *Sr.* John Hovel, *Recorder*, *Anſwered and Refelled.*

Jude 9. *Yet* Michael *the Archangel, when contending with the Devil, he diſputed about the Body of* Moſes, *durſt not bring againſt him a railing Accuſation; but ſaid, The Lord rebuke thee.*

Verſe 10. *But theſe ſpeak evil of thoſe things which they know not.*

THeſe People called *Quakers* (if they are to be believed) will tell you, they have this Angelical Spirit, the Meekneſs of *Moſes*, the Patience of *Job*, and all other Graces. But the contrary appears, *fol.* 57. of *William Penn's* Book. *Vide* this Paſſage.

But above all, Diſſenters *had little reaſon to have expected that Boariſh Fierceneſs from the* Mayor *of* London, *when*

when they conſider his eager proſecution of the King's Party under Cromwel's *Government, as thinking he could never give too great a Teſtimony of his Loyalty to that new Inſtrument; which makes the old Saying true,* That one *Renegado* is worſe than three *Turks.*

A high Charge againſt Sr. *Samuel Starling*, then Lord *Mayor*, (if true) *Cujus contrarium verum*; and therefore a Railing Acuſation: And that Light, which is (as they ſay) within them, (by which they are acted, and ſpeak, as they pretend) is the Spirit of the Devil, the Father of Lies. But in regard this Libel chargeth the then Lord *Mayor* of Diſloyalty to his King, and of Unkindneſs to the true-hearted Royaliſts; I think it neceſſary, for his Vindication, to deſire the Courteous Reader to enquire of S. *Edward Deering*, the Dean of S. *Pauls* Dr. *Sancroft*, Dr. *Whitchcocke*, Mr. *Chriſtopher Flower* Miniſter of *Lothbury*, and of *Francis Pemberton* Eſquire of the *Middle Temple*, who all can bear witneſs of his Loyalty, when he was at *Cambridge*; and that he manifeſted the ſame in the Schools, and upon all occaſions. And in the Years 1643, 1644, 1645, when Loyalty was moſt out of Faſhion; and was at laſt compelled to leave the Univerſity, and his hopes of preferment that way, he utterly refuſing to take the *Scottiſh* Covenant.

In the Years 1646, 1647, 1648, 1649, he applied himſelf to the Study of the Laws at *Grays-Inn*; and after he had performed his Exerciſes, he could not be admitted to the Bar, becauſe he utterly refuſed to ſubſcribe the Curſed *Engagement*; witneſs *Cornelius Hooker* Eſq; *Nicholas Jacob* Eſq; both *Barriſters* of *Grays-Inn*, and his Contemporaries. From 1650, until His Majeſties Reſtauration,

ſtauration, he was a Trader in the City; and how he demeaned himſelf in thoſe *Cromwellian* Times, all that knew him, will bear Teſtimony, that he walked *Antipodes* to the *Genius* of that age, to the endangering of his Life and Eſtate. His Majeſty being by Gods providence reſtored, he was eſteemed for his Loyalty a fit Perſon to be of the Jury upon the Kings Judges; and paſſed a *Juror* upon no leſs than 18. of thoſe aſſaſſinating Traytors.

But why do I endeavour to vindicate his Loyalty; which was never queſtioned by any, but by theſe Sceptical *Quakers*, whoſe whole buſineſs is to aſperſe our Religion, Laws, and all men that are not of their curſed Principles?

But I ſhall make this fair Offer for Sr. *Samuel Starling*, and undertake for him, That if *William Penn* can make out that the late Lord Mayor ever wronged one of the Kings Friends either in Body, Goods, or Good Name, one penny, that he ſhall reſtore to that Gentleman, whoſoever he be, a Thouſand pounds for every pennyworth of wrong.

But I ſuppoſe this wild rambling Colt *William Penn* miſtakes when he chargeth theſe things upon the late Lord Mayor, he means his own *Seir* deceaſed, who from a Captain, was made *Olivers* High Admiral for his great Service in promoting that New Inſtrument; who afterwards did eminent Service for the *Engliſh* Nation at *Hiſpaniola*, when he delivered up the Flower of the *Engliſh* Souldiers a Sacrifice to the Cow-Killers.

This was a *Renegado* worſe than three *Turks*; that performed ſuch excellent Service in the late *Dutch* Wars, in plundering the two *Eaſt-India Dutch* Ships of the Prize-Goods; for which he was turned out of the

Houſe

House of Commons; it is hoped, that he leaving so great an Estate of --just gotten Goods to so conscientious a Son as this *William Penn* pretends himself to be, that the tender-Conscienc'd Youth will make satisfaction to His Majesty: *Taceo cætera; De Mortuis nil nisi Bonum.*

The *Libeller* proceeds to asperse Sir *Thomas Bludworth*, *vid. fol.* 57, 58. *Alderman* Bludworth (saith he) *being conscious to himself of his partial kindness to the* Popish Friers, *hopes to make amends by his zealous prosecution of the poor* Dissenters; *for at the same Sessions he moved to have an Evidence (of no small quality) against* Harrison, *the* Frier, *sent to* Bridewel *and whipt; that he was earnest to have the Jury fined and imprisoned, because they brought not the Prisoners guilty, for only worshipping their God: Whence it may be easie to observe, That* Popish Friers *and Prelatical Persecutors are meer Confederates.*

This likewise is a Railing Accusation, false and malicious: That worthy Knight never moved at that Sessions to have an Evidence against *Harrison* the *Frier*, sent to *Bridewell*, and whipt, as this *Libeller* chargeth him; neither was it ever proved at the Sessions, That the idle prating Fellow *Harrison* was a *Frier*, or ever attempted to set the City on Fire, as was falsely suggested; but it was proved, that he had raised a rumour that the City would be burnt, whereby great fears and terrours was upon the spirits of the people; for which cause he was deservedly Fined, Whipt, and Pillored by the Court.

I could heartily wish, That these Libelling, Lying, and Discontented People, were as free of the Design of putting this whole Kingdom into a Flame, as he was from the actual Firing of the City.

But the malice of this Accusation appears in the Infe-

rence the *Libeller* makes, *viz. That* Popish Friers, *and Prelatical Persecutors, are meer Confederates.* By which, the *Libeller* would perswade the too credulous World, that the honest, sober *Protestant*, who endevoureth to put the Laws in Execution against seditious Meeters, are Persecutors: To which false, wicked, and divelish Accusation, I at present make no other reply, but what *Michael* did to the Devil, *The Lord rebuke thee:* The Lord in Heaven judge between us, and these lying discontented People.

The Accusation against the Recorder is twofold; first, that he should say, *That there would be a Law made the next Session of Parliament, That no man should have the protection of the Law, but such as conformed to the Church, fol.* 68. This Saying of the Recorders is falsely and maliciously recited; for he said, *That we shall not be always at this trade with you, you will find the next Session of Parliament there will be a Law made, That those that will not conform to the Law, shall not have the protection of the Law.* And is it not most reasonable, that they which would have protection, should give subjection? And was it not the Opinion of those blessed Saints, whose steps these men follow, when they made a Law, That those that would not subscribe the wicked Engagement, against King and House of Lords, should not have the benefit of the Law? Was not that Law then esteemed by Men of their Principles a blessed Law? And is not this *Lex Talionis? Nec lex est justior ulla, quam necis artifices arte perire sua?* And would not such a Law, if the wisdom of Parlament think fit, save the Magistrates from a great deal of trouble, and take more effect upon these stubborn people, than all the Laws

that

that have yet been made, or by the wit of man can be invented?

The ſecond Accuſation againſt the Recorder is, that he ſhould ſay, *Till now I never underſtood the reaſon of the polity and prudence of the* Spaniards, *in ſuffering the* Inquiſition *amongſt them: And certainly it will never be well with us, till ſomething like the* Spaniſh Inquiſition *be in* England. The Inference the *Libellers* make is, *What does this but juſtifie that Helliſh Deſign of the Papiſts to have prevented the firſt Reformation.*

This is a wicked and uncharitable conſtruction of the Recorders words: Theſe words do no ways juſtifie the *Papiſts*, in preventing the firſt Reformation by the Helliſh *Inquiſition.*

If theſe *Libellers* had but the leaſt grain of Charity, they would have conſtrued the words *cum grano ſalis, & in meliori ſenſu*, as the Rule of Charity directs all words to be conſtrued; and they will admit of no other conſtruction but this, *viz.* That if the *Papiſts* be ſo politick and prudent, by their *Inquiſition*, to preſerve and maintain their falſe Religion; ſurely it will be the *Proteſtants* prudence, to find ways for the preſervation of their true Religion.

Quod Faxit DEUS.

SECT. III.

The Justice and Honour of that Court Vindicated, by a True and Impartial Relation of that whole Tryal.

THE Trial of *William Penn* and *William Mead* at the *Old-Baylie*, London, the 1*st*. 3*d*. 4*th*. 5*th*. of *September*, 1670. being made publick by a *Libellers* hand, tending to the Dishonour of Justice and Courts of Justice, with divers Scandalous and Malicious Observations thereupon, I thought good, being an Eye and Ear witness of all that passed, to give a True and Impartial Relation of that Affair, whereby the Justice, Candor and Integrity of that Court towards the Prisoners, and the Scornful, Abusive and Unbecoming Behaviour of the Prisoners towards the Court, may be made manifest to the world.

There being present,

Sr. *Sam Starling*, Kr. then L. Mayor.
Sr. *John Robinson*, Kt.
Sr. *Tho. Bludworth*, Kt. and Ald.
Sr. *William Peake*, Kt. and Ald.
Sr. *John Hovel*, Kt. and Recorder.
Sr *R. Ford*, Kt & Ald.
Sr. *J. Shelden*, Kt & Ald.
Sr. *John Smith* } Sheriffs.
Sr. *James Edwards* }

I thought good to set down the Names of those Justices who were present at that Trial, *Honoris causâ*, with all their Additions and Titles, that so the World may know that the City of *London* wants not Worthy Patriots, who dare call to Accompt these vile railing

Rabshe-

Rabshekah's of this Age, who speak evil of our Religion and our God; and the rather, because the *Libeller* hath in a disgraceful way prefixed their Names without any Additions, to his Narrative; thereby intending to make them odious to the People.

Cryer, O Yes, *Thomas Veer*, —— *Bushel*, *John Hammond*, *Charles Milson*, *Gregory Walklet*, *John Brightman*, *Will. Plumsted*, *Henry Henley*, *Thomas Damask*, *Henry Michel*, *William Lever*, *John Baily*.

The Form of the Oath.

You shall well and truly try, and true Deliverance make betwixt our Soveraign Lord the King, and the Prisoners at the Bar, according to your Evidence; So help you God.

The Indictment.

That *William Penn* Gent. and *William Mead* late of *London*, Linnen-Draper, with divers other persons to the Jurors unknown, to the number of three hundred, the 14th. day of *August*, in the 22th. Year of the King, about Eleven of the Clock in the Forenoon, the same day, with Force and Arms, *&c.* in the Parish of S. *Bennet Grace-Church*, in *Bridge-Ward*, *London*, in the Street called *Grace-Church-Street*, unlawfully and tumultuously did assemble and congregate themselves together, to the disturbance of the Peace of our said Lord the King; and the aforesaid *William Penn*, and *William Mead*, together with other persons, to the Jurors aforesaid unknown, then and there so assembled and congregated together; the aforesaid *William Penn*, by agreement between

tween him and *William Mead* before made, and by abetment of the aforesaid *William Mead*, then and there, in the open street, did take upon himself to preach and speak, and then and there did preach and speak unto the aforesaid *William Mead*, and other persons there, in the street aforesaid, being assembled and congregated together, by reason whereof a great concourse and tumult of people in the street aforesaid, then and there, along time did remain and continue, in contempt of our said Lord the King, and of His Law, to the great disturbance of His Peace, to the great terror and disturbance of many of His Liege People and Subjects, to the ill example of all others, in the like Case Offenders, and against the Peace of our said Lord the King, His Crown and Dignity.

What say you, *William Penn* and *William Mead*, are you Guilty as you stand Indicted, in manner and form as aforesaid, or not Guilty?

Penn. It is impossible, that we should be able to remember the Indictment *verbatim*, and therefore we desire a Copy of it, as is customary in the like occasions.

Rec. You must first plead to the Indictment, before you can have a Copy of it.

Penn. I am unacquainted with the formality of the Law, and therefore, before I shall answer directly, I request two things of the Court; first, that no advantage may be taken against me, nor I deprived of any benefit which I might otherwise have received; secondly, that you will promise me a fair Hearing, and liberty of making my Defence, and that the Court would be my Council.

Court. No advantage shall be taken against you; you shall

shall have liberty; you shall be heard; this is an Indictment for Trespass, therefore you may have what Council you please.

Penn. Then I plead, not Guilty in manner and form.

Clerk. What saist thou, *William Mead*, art thou Guilty in manner and form as thou stand'st Indicted, or not Guilty?

Mead. I shall desire the same liberty as is promised *William Penn.*

Court. You shall have it.

Mead. Then I plead, not Guilty in manner and form.

The Third of September, 1670. *the Court sate.*

Cryer. Oyes, &c.

Cler. Bring *William Penn* and *William Mead* before the Barr.

Mayor. Sirrah, Who bid you put off their Hats? Give them their Hats again.

Nota. The Prisoners in stubborn manner refusing to take their Hats, they were put on again by the same person, before they came into the Court.

Nota. The Court observing, that the Prisoners standing on the Leads behind the Barr, with their Hats on, facing the Court all that day, as it were daring the Court to a Tryal, so that the Court and all the Spectators looked upon them, as offering a great Affront to the Honour of His Majesties Court, the Justices were resolved to chastise them for the same.

The Prisoners standing before the Barr with their Hats on, the Recorder *said:*

Rec. Do you know where you are?

Penn. Yes.

Rec.

Rec. Do you not know it is the Kings Court?

Penn. I know it to be a Court, and I suppose it to be the Kings Court.

Rec. Do you not know there is respect due to the Court?

Penn. I do so.

Rec. Why do you not pull off your Hat then?

Penn. Because I do not believe that to be any respect.

Rec. Well, the Court sets Forty Marks a piece on your Heads, as a Fine for your Contempt of the Court.

Penn. I desire it might be observed, that we came into the Court with our Hats off, (that is, taken off,) and if they have been put on since, it was by Order from the Bench; and therefore not we, but the Bench ought to be Fined.

Note. This is a great Falshood, for their Hats were put on behind the Barr, before they came into the Court.

Mead. I have a Question to ask the *Recorder*: Am I Fined also?

Rec. Yes.

Mead. I desire the Jury, and all people, to take notice of the injustice of the *Recorder*, who spake to me to pull off my Hat, and yet he hath put a Fine on my Head. O fear the Lord, and dread his power, and yield to the guidance of his holy Spirit, for he is not far from every one of you.

Note. This is insignificant Canting.

The Jury sworn again.

Note. It was by Sir *John Robinson* observed, that —— *Bushel*, the tender conscienced Jury-man, made an offer to kiss the Book, but did not, wherefore he was called to by the Court to be sworn again.

The

The Clerk read the Indictment as aforesaid.

Clerk. Call *James Cook* into the Court; give him his Oath. *He being sworn, he gave his Evidence.*

Cook. I was sent for from the Exchange, to disperse a Meeting in *Gracious-street*, where I saw Mr. *Penn* speaking to the people, but I could not hear what he said, because of the noise; I endevoured to make way to take him, but I could not get to him for the crowd of people; upon which Mr. *Mead* came to me, and desired me to let him go on, for when he had done, he would bring Mr. *Penn* to me.

Court. What number do you think might be there?

Cook. About three or four hundred people.

One Read, *a Constable, being sworn, was asked:*

What do you know concerning the Prisoners at the Barr?

Read. My Lord, I went to *Gracious-street*, where I found a great crowd of people, and I heard Mr. *Penn* preach to them: I endevoured with my Watchmen to get at Mr. *Penn* to pull him down, but I could not, the people kicking my Watchmen and my self on the shins: I saw likewise Captain *Mead* speaking to Lieutenant *Cook*, but what he said I cannot tell.

Mead. What did *William Penn* say?

Read. There was such a great noise, that I could not tell what he said.

Mead. Jury, observe this Evidence, he saith he heard him preach, and yet saith, he doth not know what he said.

Court. What number do you think might be there?

Read. About four or five hundred.

Pen. I desire to know of him what day it was.

Read. The 14th. day of *August.*

Pen. Did he speak to me, or let me know he was there? for I am very sure I never saw him,

Crier. Call *Whiting* into the Court.

Court. Give him his Oath.

Whiting. My Lord, I saw a great number of People, and Mr. *Penn* I suppose was speaking, I saw him make a motion with his Hands, and heard some noise, but could not understand what he said; but for Captain *Mead*, I did not see him there.

Record. What say you, Mr *Mead*, were you there?

Mead. It's a Maxim in your own Law, *Nemo tenetur accusare seipsum.* Which if it be not true *Latine*, I am sure it's true *English*, That *no man is bound to accuse himself:* And why dost thou offer to ensnare me with such a Question? Doth not this shew thy Malice? Is this like a Judge that ought to be Council for the Prisoner at the Bar?

Record. Sir, Hold your Tongue, I did not go about to ensnare you.

Penn. I desire we may come more close to the point; and that Silence be commanded in the Court. [*Silence being made.*]

Pen. We confess our selves to be so far from recanting or declining to vindicate the Assembling of our selves to Preach, Pray, or worship the Eternal, Holy, Just God, that we declare to all the World, That we do believe it to be our indispensable Duty, to meet incessantly upon so good an Account, nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God who made us.

Nota.

Nota As clear Evidence as ever was offered to any *Jury*, two Witneſſes prove the Fact againſt both the Priſoners, and the Priſoners confeſs the whole Matter in effect, and juſtifie themſelves, and declare they will do the like again, whatſoever Laws the King and Parliament can provide againſt the ſame. O confident Impudency! Surely both King and Parliament will take notice of *Penn's* Arrogancy.

Sr. *Rich. Browne.* You are not here for worſhipping of God, but for breaking the Law.

Mead. Browne, What have you to do there? you are no *Juſtice:* Come off the Bench.

Brown. Sir, I am a *Juſtice*, and you are an Impudent Fellow.

Pen. I affirm I have broken no Law; nor am I guilty of the Indictment laid to my Charge; And to the end the Bench, the Jury, and my ſelf, with thoſe that hear us, may have a more direct underſtanding of this Procedure, I deſire you would let me know by what Law it is you proſecute me.

Rec. The Indictment is grounded upon the *Common Law.*

Pen. Where is that *Common Law?*

Rec. You muſt not think I am able to run up ſo many Years, and ſo many Adjudged Caſes, which we call *Common Law*, to anſwer your Curioſity.

Pen. If it be *Common*, it ſhould not be ſo hard to produce.

Nota. How Mr. *Penn* plays upon the Word *Common.*

Mayor It's call'd *Common Law*, to diſtinguiſh it from the *Statute-Law*: Now the *Common Law* is Common Right, or *Lex Rationis*, imprinted in every mans Underſtanding;

derſtanding; and the publick Peace is the Law's Darling, and every great Aſſembly of people may endanger the publick Peace; and therefore the Law eſteems them unlawful Aſſemblies, unleſs they have a Warrant for their Aſſembling.

Recor. Sir, Speak to the Indictment; you are now upon Matter of Fact, which Fact you have heard proved againſt you; you are to anſwer it: If the Fact be found againſt you, you may then ſpeak to the Matter of Law, in Arreſt of Judgment, and you ſhall be heard.

Pen. I ſay, it is my place to ſpeak to Matter of Law; I am arraign'd a Priſoner, my Liberty, which is next to Life it ſelf, is now concerned; you are many Mouths and Ears againſt me; and if I muſt not be allowed to make the beſt of my Caſe, it is hard; unleſs you ſhew me, and the people the Law you ground your Indictment upon, I ſhall take it for granted, your proceedings are meerly Arbitrary.

Rec. You have been told, if the Fact be found againſt you, it is time then to diſpute the Law. The Queſtion now is, whether you are guilty of the Indictment.

Pen. I have asked but one Queſtion, and you have not anſwered me; though the Rights and Priviledges of every *Engliſhman* be concerned in it.

Rec. If I ſhould ſuffer you to ask Queſtions till to Morrow Morning, you would be never the wiſer.

Pen. That is according as the Anſwers are.

Rec. Sir, We muſt not ſtand to hear you all night.

Mayor. You have been anſwered your Queſtion; it's time to diſpute the point of Law, if you are found guilty of the Fact. But your Deſign is to affront the Court, and amuſe the people; you have not Confidence enough to deny the Fact ſo plainly prov'd againſt you; but you have

have Impudence enough to abuſe the Court by your unſeaſonable Diſcourſe.

Pen. I deſign no affront to the Court, but to be heard in my juſt Plea; and I muſt plainly tell you, That if you will deny me *Oyer* of the Law, which you ſuggeſt I have broken, you do at once deny me an acknowledged Right; and evidence to the whole world, your reſolution to ſacrifice the priviledges of *Engliſhmen* to your Siniſter and Arbitrary Deſigns.

Rec. Take him away; if you take not ſome courſe with this peſtilent Fellow, to ſtop his Mouth, we ſhall not be able to do any thing to night.

Mayor. Take him away, take him away; turn him into the *Bail-Dock.*

Pen. Is this Juſtice or true Judgment? Muſt I therefore be taken away, becauſe I plead for the Fundamental Laws of *England?* However, this I leave upon your Conſciences, who are of the *Jury*, (and my ſole Judges) That if theſe Ancient Laws, which relate to Liberty and Property (and are not limited to particular perſwaſions in Matters of Religion) muſt not be indiſpenſably maintained and obſerved, who can ſay, he hath right to the Coat upon his Back? *&c.*

Rec. Be ſilent there.

Pen. I am not to be ſilent in a Caſe wherein I am ſo much concerned.

Nota, Mr. *Penn* makes it to be a Fundamental Law, *viz.* The *Jury* to be his Sole Judges; when by the Fundamental Laws all Trials are to be by *Judge* and *Jury*; and never queſtioned by any before Mr. *Penn* (the New Broacher of Old Hereſies) diſputed the ſame. And this is the Reaſon he ſo often calleth for *Oyer* of the Law, upon which the Indictment is grounded, that ſo the *Jurors* might meaſure the Truth of the Indictment, and Guilt of the Fact by the knowledge of that Law. *See his Book*, fol, 30.

Mead.

Mead. You men of the *Jury*, here I do now ſtand, to anſwer to an Indictment againſt me, which is a Bundle of Stuffe, Lies and Falſhoods; for therein I am accuſed that I met *vi & armis*; Time was, when I had freedom to uſe a Carnal Weapon; and then I thought I feared no man; but now I fear the Living God; and dare not make uſe thereof.

Mayor. Believe you who can; your Brethren the *Munſterians* pretended as much.

Mead. I ſay I am a peaceable man; therefore it is a proper Queſtion what *William Penn* demanded in this Caſe, an *Oyer* of the Law, on which the Indictment is grounded.

Rec. I have made Anſwer to that already.

Mead. *Turning his Face to the* Jury, *ſaith*,

You men of the *Jury*, who are my Judges, if the *Recorder* will not tell you, what makes a *Riot*, a *Rout*, or an *Unlawful Aſſembly*; *Coke* tells us what makes a Riot, a Rout, and an Unlawful Aſſembly: *A Riot is, when three or more are met together, to beat a Man, or to enter forcibly into another mans Land, to cut down his Graſs, his Wood, or break down his Pales.*

Rec. Yes, and to do any other Unlawful Act. But I thank you, Mr. *Mead*, That you will tell me what the Law is; [*pulling off his Hat.*]

Mead. Thou maiſt put on thy Hat, I have never a Fee for thee now.

Mayor. An intollerable Affront! Mr. *Mead*, I thought you had been a meek man, as you profeſs. You deſerve to have your Tougue cut out for affronting the Court, as well as the Priſoner had his Hand cut off that threw a Stone at the Court.

Rec. If you diſcourſe on this manner, I ſhall take occaſion againſt you. *Nota*,

Nota. Mr. *Mead* being put into the Bail-Dock, the *Recorder* proceeded to give the *Jury* their Charge.

Record. You have heard what the *Indictment* is; it is for Preaching or Speaking to the people, and drawing a Tumultuous Company after them: there are three Witneſſes that have proved this; That *Penn* did preach there, that Mr. *Mead* was there, and did abet him, and did allow of the ſame; now we are upon the matter of Fact, which you are to keep to and obſerve as what hath been ſworn at your peril.

Pen. I appeal to the *Jury*, who are my Judges, whether the proceedings of the Court are not moſt Arbitrary, and void of all Law; in offering to give the *Jury* their Charge in the abſence of the Priſoners: I ſay, it's directly oppoſite to, and deſtructive of the undoubted Right of every *Engliſh* Priſoner, as *Coke* in the 2 *Inſt.* 29. on the Chap. of *Magna Charta* ſpeaks.

Rec. Why, why you are preſent, you do hear, do you not?

Pen. No thanks to the Court, that commanded me into the Bail-Dock.

Nota. Penn made ſuch an uncivil noiſe, that the Court could not give the *Jury* the Charge; he was therefore put into the *Bail-Dock*, which ſtands even with the Bar, and the Priſoners might hear the Charge there as well as a Priſoner might hear at the Bar: This therefore was a cauſleſs Exclamation.

Mead. Are theſe according to the Rights and Priviledges of *Engliſhmen*, that we ſhould not be heard, but turned into the Bail-Dock, for making our Defence; and the *Jury* to have their Charge given them in our Abſence.

Rec. Take them away into the Hole; to hear them talk

talk all night, as they would, that I think doth not become the Honour of the Court; and I think that you, (*i. e.*) the *Jury*, your ſelves, would be tired out, and not have patience to hear them.

Nota. The *Jury* withdrew for an hour and half; eight came down agreed, but four remain'd above; the Court ſent for them, and they accordingly came down: The four Diſſenters ſaid, *They were not agreed.*

The Recorder *ſpeaking to Mr.* Buſhel, *ſaid*

Rec. Sir, You are a Cauſe of this Diſturbance, and manifeſtly ſhew your ſelf an Abettor of Faction. I ſhall ſet a Mark on you.

Sir *J. Robinſon.* Mr. *Buſhel*, I have known you this fourteen years; you have thruſt your ſelf upon this *Jury*, becauſe you think there is ſome work for you; I tell you, you deſerve to be indicted more than any man that hath been brought to the Bar this day.

Buſh. No Sir *John*, There were threeſcore before me, and I would willingly have got off, but could not.

Sir *Tho. Bludw.* I ſaid, when I ſaw Mr. *Buſhel*, what I ſee is come to paſs; for I knew he would never yield. Mr. *Buſhel*, we know what you are.

Mayor. You are an Impudent Fellow, I will put a Mark upon you.

Nota. The *Jury* was ſent up until agreed, and ſome conſiderable time after they returned, Silence call'd, the *Jury* was called over.

Cler. Are you agreed upon your Verdict?

Jury. Yes.

Cler. Who ſhall ſpeak for you?

Jury. Our Fore-man.

Cler. Look upon the Priſoners at the Bar; How ſay you?

you? Is *William Penn* guilty of the Matter whereof he ſtands Indicted in manner and form, or not guilty?

Fore-m. Guilty of ſpeaking in *Gracious-Street.*

Court. Is that all?

Fore-m. That is all I have in Commiſſion.

Record. You had as good ſay nothing.

May. What, was it not an unlawful Aſſembly? You mean he was ſpeaking to a Tumult of People there?

Fore-m. My Lord, this was all I had in Commiſſion.

Nota. Six or ſeven of the *Jury* did agree to the *Mayors* Queſtion; upon which *Buſhel*, *Hammond*, and two others oppoſed themſelves, they allowed of no ſuch Word as an *Unlawful Aſſembly* in their Verdict.

Rec. The Law of *England* will not allow you to depart till you have given in your Verdict.

Jury. We have given in our Verdict, and can give in no other.

Rec. Gentlemen, you have not given in your Verdict, this is no Verdict in Law; and you had as good ſay nothing; therefore go and conſider it again once more, that we may make an end of this troubleſome buſineſs.

Jury. We deſire we may have Pen, Ink and Paper.

Nota, The Court adjourns for half an hour; The Court returns, and the *Jury* come down likewiſe.

The Priſoners are brought to the Bar: The *Jury* being called over,

Cler. Are you agreed of your Verdict?

Jury. Yes.

Cler. Who ſhall ſpeak for you?

Jury. Our Fore-man.

Cler. Look upon the Priſoners; what ſay you? Is

William Penn guilty in Manner and Form, as he ſtands Indicted, or not guilty?

Fore-m. Here is our Verdict; holding forth a piece of Paper to the Clerk of the Peace, which follows;

WE the *Jurors*, hereafter named, do find *William Penn* to be guilty of Speaking or Preaching to an Aſſembly met together in *Gracious-Street*, the 14th of *Auguſt* laſt 1670. And that *William Mead* is not guilty of the ſaid Indictment.

Thomas Veer, Fore-man.	*Charles Milſon.*
Edward Buſhel.	*Gregory Walklet.*
John Hammond.	*John Baily.*
Henry Henley.	*William Lever.*
Henry Michel.	*James Damask.*
John Brightman.	*William Plumſted.*

Nota, Some of the Court were for accepting this Verdict; but the Evidence being as plain and full againſt *Mead* as againſt *Penn*, the Court refuſed the Verdict.

Mayor. What will you be led by ſuch a ſilly Fellow as *Buſhel*? a Canting Fellow; I warrant you, you ſhall come no more upon *Juries* in haſte: You are a Fore-man indeed; I thought you had underſtood your place better.

Record. Gentlemen, You ſhall not be diſmiſs'd till we have a Verdict; and by the Law of *England* you are to be lock'd up without Meat, Drink, Fire or Tobacco; you do abuſe the Court; we will have a Verdict by the help of God.

Pen.

Pen. My *Jury* (who are my Judges) ought not to be thus menaced; their Verdict ought to be free, and not compelled; the Bench ought to wait on them, and not foreſtall them; I do deſire that Juſtice may be done me, and that the Arbitrary Reſolves of the Bench may not be made the meaſure of my *Juries* Verdict.

Rec. Stop that prating Fellows mouth; or put him out of the Court.

Nota, How Mr. *Penn* abuſes the Court; the Court are by Law Judges, what is a Verdict in Law, and what is not a Verdict in Law.

May. Gentlemen, You have heard that Mr. *Penn* Preached, that he gathered thereby a Tumult of People; that Mr. *Mead* was there, and abetted him; and that they not only diſobey the Martial Power, but Civil alſo.

Penn. It's a great Miſtake; we did not make the tumult, but they that interrupted us. We met not there with a Deſign to diſturb the Civil peace, ſince (1.) We were with force of Arms kept out of our lawful Houſe; and met as near it as the Souldiers would give us leave. (2.) Becauſe it was no new thing, but what was uſual and cuſtomary with us; it's very well known we are a peaceable people, and cannot offer violence to any man.

Nota, A peaceable innocent People indeed, that when the King had ſeized the Meeting-Houſe into His Hands, as by Law he might, they would come and break open the Doors, and there congregate, expreſly againſt the Kings Command, and therefore there was a neceſſity of Souldiers to keep the Kings poſſeſſion; they violently overpow'ring the Conſtable and his Watchmen, and it is proved, that theſe People at this time kicked and ſpurned the Conſtable and his Watchmen, he endeavouring to diſſipate this Unlawful Aſſembly, as is ſworn by *Read* the Conſtable.

Penn. The agreement of Twelve Men is a Verdict in Law, and ſuch an one being given by the *Jury, I require the Clerk of the Peace to record it, as he will anſwer it at his peril*; and if the *Jury* bring in another Verdict contrary to this, I affirm they are perjur'd men in Law.

Buſhel. Nor will we ever do it.

Nota, The *Jury* in Mr. *Penn*'s opinion, and *Buſhel*'s both, are perjur'd men, for that at laſt they brought in a Verdict contradictory to this.

At this time ſome of the *Jury* complained to the Court, that the four men, *viz. Buſhel* and *Hammond*, and the other two, would ſtarve them, and that they had brought Strong-Water Bottles in their Pockets deſignedly.

Mayor. You are as ſtrong as any of them; ſtarve them, and hold your Principles.

Rec. Gentlemen, You muſt be contented with your hard Fare, let your Patience overcome it; for the Court is reſolved to have a Verdict, and that before you can be diſmiſt.

Jury. We are agreed; we are agreed.

Nota, The Court having a reſpect to the health of the *Jury*, adjourned until Seven next Morning although it was *Sunday*; which otherwiſe they would not have done.

The Court meets accordingly, the Jury is called over.

Clerk. Are you agreed upon your Verdict?

Jury. Yes.

Clerk. Who ſhall ſpeak for you?

Jury. Our Fore-man.

Clerk. Look upon the Priſoners at the Bar; Is *William Penn* guilty of the Matter whereof he ſtands Indicted?

Fore-m.

Fore-m. William penn is guilty of ſpeaking in *Gracious-ſtreet.*

Mayor. To an unlawful Aſſembly.

Buſhel. No my Lord, we give no other Verdict than what we gave laſt night.

Mayor. You are a factious fellow, and a courſe ought to be taken with you.

Sir. *Tho. Bludworth.* I knew *Buſhel* would never yield.

Buſhel. Sir *Thomas*, I have done according to my Conſcience.

Mayor. That Conſcience of yours would cut my Throat.

Buſhel. No my Lord, it never ſhall.

Mayor. But rather than you ſhall cut my Throat, I will in defence of my ſelf cut yours firſt.

Record. He hath inſpired the Jury, he has the Spirit of Divination; I will have a poſitive Verdict, or elſe you ſhall ſtarve for it.

Penn. I will ask the Recorder one Queſtion: Do you allow of the Verdict given of *William Mead?*

Rec. It cannot be a Verdict, for that you both were indicted for a Conſpiracy; and one being found Not Guilty, and not the other, it could not be a Verdict.

Penn. If Not Guilty be no Verdict, then you make of the *Jury* and *Magna Charta* a Noſe of Wax.

Mead. How! Is Not-Guilty no Verdict?

Recor. No, it's no Verdict in this Caſe.

Penn. I affirm that the Conſent of a *Jury* is a Verdict in Law. And if *William Mead* be not guilty, it conſequently follows, That I am clear; for that I could not conſpire alone.

The Jury *return.*

Crier. Oyes, &c. Silence in the Court.

Court. Call over the *Jury.*

Clerk. What ſay you, Is *William Penn* guilty of the Matter whereof he ſtands Indicted, in manner and form aforeſaid, or not guilty?

Fore-m. Guilty of ſpeaking in *Gracious-Street.*

Record. What is this to the purpoſe? I ſay, I will have a Verdict; and ſpeaking to *Edward Buſhel*, ſaid, *You are a Factious Fellow, I will ſet a Mark upon you, and whilſt I have to do in the City, I will have an eye on you.*

Mayor. Have you no more wit than to be led by ſuch a pitiful Fellow as *Buſhel?* Were I of the *Jury*, rather than he ſhould ſtarve me, I would ſlit his Noſe for him.

Penn. It is intolerable that my *Jury* ſhould be thus menaced: Is this according to the Fundamental Laws?

Nota, This is the fourth time the *Jury* brought in this inſignificant Verdict, *viz.* [*That they find* Penn *guilty of ſpeaking in* Gracious-Street] and how this anſwers the Queſtion, *viz.* [*What ſay you, Is* William Penn *guilty of the Matter whereof he ſtands Indicted, in manner and form, or not guilty?*] Let the world judge whether this be a Verdict or not. They thus often abuſing the Court, made the diſpleaſure of the Court againſt them; and ſurely not without cauſe.

Nota, *William Penn* made ſuch a Noiſe in the Court, that the Court could not hear the *Jury*, nor the *Jury* the Court.

Record. My Lord, you muſt take a courſe with that ſame Fellow.

Mayor. Stop his mouth; Goaler, bring Fetters, and ſtake him to the Ground.

Nota,

Nota. Upon this Mr. *Penn* was very silent and quiet, although nothing was done to him.

Record. Till now I never understood the reason of the policy and prudence of the *Spaniards*, in suffering the Inquisition amongst them; and certainly it will never be well with us till some thing like unto the *Spanish* Inquisition be in *England*.

Nota, The *Jury* being commanded up again, the *Jury* refused.

The Recorder *directing his Speech to the* Jury, *said*,

Record. Gentlemen, We shall not always be at this Trade with you; you will find the next Session of Parliament, there will be a Law made, That those that will not conform to the Law, shall not have the protection of the Law.

Jury. We ought not to be returned, having all agreed, and set our hands to the Verdict.

Record. Your Verdict is no Verdict in Law; you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve.

Jury. We have given in our Verdict, and all agreed to it, and if we give in another, it will be a force upon us to save our lives.

Nota. These Men were very like to be starved, when they had Roast beef, Capons, Wine and Strong-drink sent them (as is ready to be proved) during the time they were considering of their Verdict.

Officer. My Lord, they will not go up.

Nota. The Court spoke to the Sheriff, and he came from his Seat, and said,

Sheriff.

Sheriff. Come Gentlemen, you must go up; you see I am commanded to make you go.

Crier. Oyes, &c. The Court adjourns until seven of the clock next morning.

The Court sits the fifth of September, 1670.

Clerk. Set *William Penn* and *William Mead* to the Bar: Are you all agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. Our Fore-man.

Clerk. Look upon the Prisoners: What say you? Is *William Penn* Guilty of the Matter whereof he stands Indicted in manner and form, *&c.* or Not Guilty?

Fore-m. Here is our Verdict in Writing, and our hands subscribed to it.

Clerk. How say you? Is *William Penn* Guilty, *&c.* or Not Guilty?

Fore-m. Not Guilty.

Clerk. How say you? Is *William Mead* Guilty, *&c.* or Not Guilty?

Fore-m. Not Guilty.

Clerk. Then hearken to your Verdict; you say, That *Will. Penn* is not Guilty in manner and form, as he stands Indicted: You say that *Will. Mead* is not Guilty in manner and form as he stands Indicted: And so you say all?

Jury. Yes, we do so.

Record. I am sorry, Gentlemen, you have followed your own wilful Opinions, rather than the good and wholesom advice which was given you; God keep my Life out of your hands: But for this, the Court Fines you Forty Marks a Man, and Imprisonment until paid.

Penn.

Penn. I demand my Liberty, being freed by the Jury.

Mayor. No, you are in for your Fines.

Penn. Fines! for what?

Mayor. For Contempt of the Court.

Penn. I ask, If it be according to the Fundamental Laws of *England*; That any *Engliſhman* ſhould be Fined or Amerced, but by the judgment of his Peers or Jury?

Mayor. By the Laws of *England* this Court hath power to Fine for Contempts.

SECT. IV.

The Fining of that Jury that gave two contrary Verdicts Juſtified, to prevent a Failer of Juſtice in London.

IN regard that this is a Caſe, that very much concerns the King and Kingdom, and is now under the conſideration of all the Judges, I ſhall only make four Remarks upon this Caſe, and leave the determination of the ſame to the Honourable Sages of our Law.

Firſt Remark.

As Nature abhors a *Vacuum* in the Univerſe, ſo it is the Honour of our Law, that it will not ſuffer a *Failer* of Juſtice, according to that Maxim, *Ne curia Regis*

deficeret in justitia exhibenda; therefore it is, that although our Law appoints all Trials to be by Juries, yet in six Cases cited by my Lord *Coke*, 1 *p. Instit. sect.* 102. *fol.* 74. the Trial is by Certificate only, and not by Jury. The first whereof *Littleton* speaketh of in *section* 102. *When a Man in time of War, is out of the Realm in the Kings Wars: As when a Lord distreineth his Tenant, that holdeth of him by service of a whole Knights Fee; and the Tenant pleadeth and will aver, That he was with the King in* Scotland, &c. *by forty days, and the Lord avers the contrary*; it is said, *That it shall be Tried by the Certificate of the Marshall of the Kings Host, in writing under his seal, which shall be sent to the Justices.*

The second Case is: *In times of Peace out of the Realm: As if it be alledged, in avoidance of an Outlawry, That the Defendant was in Prison at* Bourdeaux; *It shall be Tried by Certificate of the Mayor of* Bourdeaux.

The third Case is: *For Matters within the Realm: The Custome of* London *shall be certified by the Mayor and Aldermen, by the mouth of the Recorder.*

Vid. the other extraordinary Cases at large, in 1 *part Institutes, sect.* 102. *fol.* 74. The reason is, Because by Law they cannot be otherwise Tried. In like manner, Petty Jurors, that have given their Verdict contrary to their Evidence, have been Fined by the Justices, in Cases where the Law hath provided no other punishment, as by *Attaint, &c.*

Vid. Whartons Case, *Yelverton fol.* 23. *Noy* reports the same *fol.* 48. and Judge *Popham* said, there were divers Presidents to that purpose, and cites divers, one by Justices in *Eire.*

Wats verf. *Brains:* In an Appeal, *in Banco Regis: Crooke l.* 3. 779.

Vid.

Vid. Leonard, l. 2. 132. *pl.* 175. *& l.* 3. 147. *pl.* 196. *Southwels* Caſe in the Exchequer.

More, 730. *pl.* 1016. *Lemnois* Caſe in the Court of Wards.

Coke, l. 12. 23. *Prices* Caſe in the Star-Chamber. Theſe Caſes are all in Print.

Trin. 17. Car. II. *in Banco Regis*: *Wagſtaffs* Caſe. This agrees with our preſent Caſe in all points.

Mich. 16. Car. II. *in Banco Regis*: *Leech*, and five others, being of the Jury, at Juſtice-Hall in the *Old Baily*, the laſt Seſſions, refuſed to find certain *Quakers* Guilty, according to their Evidence; and upon that, they were bound to appear in the Kings Bench the firſt day of the next Term; they appeared accordingly, and the Court directed an Information to be brought againſt them, and upon that they were Fined.

So that it plainly appears, The Fining of Jurors that find contrary to their Evidence, is no Innovation, but always practiced, and that by as learned Judges, as ever *England* bred.

The ſecond Remark.

If it be objected, That in the preſent Caſe, being an Indictment for a Treſpaſs, an *Attaint* doth lie, and therefore ought to be puniſhed in *Attaint*.

Anſwer. Brooke, Title, *Attaint* 130 ſaith, Et ſic admittitur, **qd ſi le Roy fuit merement Party, Attaint negiſt.** *Where the King is ſole Party, Attaint doth not lie.* In our preſent Caſe, the King is ſole Party, and therefore by the old Law no *Attaint* doth lie.

Nota. Brookes was Chief-Juſtice in *Henry* the Eighths time, and a Reporter in *Henry* the Sevenths time, and therefore may well be preſumed to know what the *Common Law* was in Caſe of *Attaints*, he living when the Statutes of the 11 *Henry* 7. *cap.* 21.

and the Statute of 23. *H.* 8. *cap.* 3. were made, by which Statutes in *Attaint*, in Cases betwixt party and party, the judgment was altered.

Becauſe I am not willing to make miſtakes by my conſtruction of the Books, I will recite you the very words of the Year-Book, and of *Brookes* himſelf.

Mich. 20. H. 7. 6. pl. 16.

A Ttaint port p William Tay vers Henry Tuſt, fur faux ſerem̃t in Bill ſur leſtatute de vicount p prender argent de diũſe homes encounter meſme le ſtatute, (Coningesby) alledge en arreſt q̃ l'attaint negiſt pur ceo que Roy eſt party car Henry ſue pur luy, et p le Roy: Et auxy le Record eſt Quod reddat H.T. 40 l. quas domino Regi & predicto *Henrico* debet. Jſſint party = Et auxy ne poit eſtre reſtore vs le Roy per Judgement icy, Mes Couient ſuer al Roy per petic̃on? p q̃, &c. *Fairfax*; Le Roy neſt party, Car ſi *H.* 7. diſcontinue le ſuit, ou ſoit Monſue, ou releaſe, l'action eſt determine vs le Roy, Et Coment q̃ le Roy aũoit le moyety recouer, vncore ceo ne ſuit le Roy party, Mient pluis in Trñs, ou Forcible Entry ou autres actions ou le Roy aũa fine, in queux Caſes giſt attaint aſſets bien p q̃, &c. Et l'attaint ſuit vs, et remaine p default des Jurors.

Br. Attaint. 127. Nota dicitur q̃ p Informac̃on fait p le Roy que paſs ſur iſſue trie, le Roy ne l'informer n'aũa attaint, car l'informer n'eſt pleneim̃ party, et quant le Defendt ad reſpond, le Attorney le Roy reply p le Roy, et nul plus mention eſt puis del Informer, & ideo ne l'un ne l'auter n'aũa attaint. 4 M. 1.

Attaint

Attaint. 130. Si home port Bill Quod redd. T. 40 l. quas Domino Regi & pred. T. debet fur Stat. de 23 H. 6. c. 10. et le Jury passa vs le Defendt faurent, attaint gist p le Defendt, Car le Roy nest merement party, Car le party poit discontinue ou release sans le Roy, nient obstant q̄ le Roy recoua le moyety. Et ideo l'attaint fuit vō quod Nota. Et sic admittitur que si le Roy fuit merement party Attaint ne gist.

Fitz Herbert, Natura brevium, Title *Attaint G. The Writ of* Attaint *lieth where false Verdict is given in a Court of Record, against the Plaintiff or Defendant, or against the Demandant or Tenant, in a Plea, real or personal, sued by Writ or by Bill; if the Debt or Dammages do exceed* 40 s. *then he against whom the Verdict passed, shall have a Writ of* Attaint, *and the Writ shall be such;* as is set down there, which is between Party and Party, *vid. H.*

Coke, l. 3. *Instit. sect.* 514. *fol.* 294. saith the same: Attincta, *is a Writ that lieth where a false Verdict, in a Court of Record upon issue joyned betwixt Parties is given.*

Nota. If these Definitions are true, an *Attaint* lieth only betwixt Party and Party: *Ergo*, Not in Indictments, *&c.*

It is agreed by all sides, That an *Attaint* lieth not in an Indictment of Treason, Murder, or Felony; much less in an Indictment of Trespass, which, in the Eye of the Law, is a far lesser Offence than them aforenamed.

Nota. At Common-Law no *Attaint* did lie in Action of Trespass before the Stat. 1 *Edw.* 3. *cap.* 6. And by the Statute 5 *Edw.* 3. *cap.* 7. it's Enacted; "That whereas it is contained in a Statute "late made at *Westminster*, in the first Year of the Reign of Our "Soveraign Lord the King that now is, That *Attaints* shall be "granted in Writs of Trespass: It is accorded and established, "That

"That Writs of *Attaint* ſhall be from henceforth granted, as well "in Pleas of Treſpaſs moved without Writ, as by Writ before "Juſtices of Record, if the Dammages judged, do paſs 40 *l.*

Nota. If at the Common-Law no *Attaint* lay in Actions of Treſpaſs, ſurely then no *Attaint* did lie in Indictments of Treſpaſs, where there is no Dammages given, *à fortiori.*

The third Remark.

It is to be obſerved that the Common Law, as to *Attaints*, is altered ſince the *Statute* of the 23. *H.* 8. *cap.* 3. Doth not my Lord *Coke* upon *Littleton*, lib. 3. cap. 8. *Sect.* 514. affirm the ſame. "And ſeeing, ſaith he, That "all Trials of Real, Perſonal, and Mixt Actions depend "upon the Oath of Twelve men, prudent Antiquity in-"flicteth a ſtrange and ſevere puniſhment upon them if "they were attainted of Perjury. 1. *Quod amittat Liberam Legem in perpetuum.* 2. *Quod forisfaciat omnia Bona & Catalla ſua.* 3. *Quod Terræ & Tenementa in manus Domini Regis capiantur.* 4. *Quod Uxores & Liberi extra domus ſuus ejicerentur.* 5. *Quod Domus ſuæ proſtrentur.* 6. *Quod Arbores ſuæ extirpentur.* 7. *Quod Prata ſua arentur.* 8. *Quod Corpora ſua Carceri mancipentur.* So odious is this Perjury in the Eye of the Common Law. But ſince *Littleton* wrote, ſaith *Coke*, "A Statute hath "been made in mitigation of the Severity of the Com-"mon Law, in caſe when the *Petite Jury* is attainted.

And it can never be proved that ſince that *Statute*, that ever any *Attaint* was maintainable at the Common Law. And I do hereby put the *Opponent* to prove two things.

1. That he produce a Caſe where an *Attaint* was brought in caſe of a *Falſe Verdict* in an *Indictment* of *Treſpaſs*,

Treſpaſs, or that he can ſhew the Form of a *Writ* of *Attaint* for that purpoſe either in the *Regiſter*, or *Natura Brevium*.

2. Let him inſtance a Caſe where an *Attaint* was maintained at *Common-Law* ſince that *Statute*, *Credat mihi magnus Apollo.*

The fourth Remark.

It appears by the Proeme of the *Statute* made 11. *H.* 7. *cap.* 21. That no *Attaint* lay where *Juries* gave falſe Verdicts in *London*: *vid.* the *Statute*, which ſaith; *Whereas Perjury is much and cuſtomably uſed within the City of* London, *amongſt ſuch perſons as paſſen and be impannelled upon Iſſues joyned betwixt Party and Party in the Courts of the ſaid City, to the great Diſpleaſure of Almighty God, and alſo to the Diſinheritance and manifold Wrongs of the Kings Subjects; foraſmuch as there is Empannel in the ſame Inqueſts perſons of little Subſtance, Diſcretion and Reputation, and alſo no Attaint, ne other ſufficient puniſhment is for ſuch Perjured perſons before this time purveyed and ordained within the ſame City.*

So that that *Statute* and the *Statute* of the 23. *H.* 8. *cap.* 3. ordained *Perjury* of the Jury-men, to be puniſhed by *Attaint* in the *Huſtings Court* of *Common-Pleas* of *London* before the Mayor and ſix Aldermen.

Surely if *Attaint* lay not in *London* in Actions betwixt Party and Party before that time, *Attaints* likewiſe in *Indictments* could not lie. And this will be taken for granted by all men, unleſs our Opponents can otherwiſe make it appear, by one or more Preſidents, That an *Attaint* was brought *in Banco Regis*, or *in Communi Banco* at *Weſtminſter* (in which Courts only *Attaints* by the *Com-*

mon

mon-Law are Sueable) for a false Verdict in *London* taken before the *Mayor*, *Aldermen*, and *Sheriffs*. From these four Remarks I conclude nothing, but leave the Determination of this important Affair to the Honourable Sages of our Law; and pray, That in this, and in all other Businesses of Concernment, that God (the Great Judge of Heaven and Earth) would guide and direct them.

FINIS.

Pag 2. lin. 6. for *subject*, read *subvert*. p. 10. r. Sir. *John Robinson* Knight and Baronet.